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Approved for use through 03/31/2012. OMB 0651-0016  
U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE

**PETITION TO ACCEPT UNAVOIDABLY DELAYED PAYMENT OF  
MAINTENANCE FEE IN AN EXPIRED PATENT (37 CFR 1.378(b))**

Docket Number (Optional)  
3059-100

Mail to: Mail Stop Petition  
Commissioner for Patents  
P.O. Box 1450  
Alexandria VA 22313-1450  
Fax: (571) 273-8300

05/03/2011 DALLEN 00000012 5924578  
01 FC:1599

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NOTE: If information or assistance is needed in completing this form, please contact Petitions Information at (571) 272-3282.

Patent Number: 5,924,578

Application Number: 08/811,772

Issue Date: Jul. 20, 1999

Filing Date: Mar. 7, 1997

CAUTION: Maintenance fee (and surcharge, if any) payment must correctly identify: (1) the patent number (or reissue patent number, if a reissue) and (2) the application number of the actual U.S. application (or reissue application) leading to issuance of that patent to ensure the fee(s) is/are associated with the correct patent. 37 CFR 1.366(c) and (d).

Also complete the following information, if applicable:

The above-identified patent:

☐ is a reissue of original Patent No. \_\_\_\_\_ original issue date \_\_\_\_\_;  
original application number \_\_\_\_\_  
original filing date \_\_\_\_\_

☐ resulted from the entry into the U.S. under 35 U.S.C. 371 of international application  
\_\_\_\_\_ filed on \_\_\_\_\_

**CERTIFICATE OF MAILING OR TRANSMISSION (37 CFR 1.8(a))**

I hereby certify that this paper (along with any paper referred to as being attached or enclosed) is

(1) being deposited with the United States Postal Service on the date shown below with sufficient postage as first class mail in an envelope addressed to Mail Stop Petition, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 OR

(2) transmitted by facsimile on the date shown below to the United States Patent and Trademark Office at (571) 273-8300.

Apr. 29, 2011

Date

  
Signature

Robert L. Epstein

Typed or printed name of person signing Certificate

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This collection of information is required by 37 CFR 1.378(b). The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to take 8 hours to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Mail Stop Petition, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.

PTO/SB/65 (03-09)  
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 U.S. Patent and Trademark Office: U.S. DEPARTMENT OF COMMERCE  
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## 1. SMALL ENTITY

☒ Patentee claims, or has previously claimed, small entity status. See 37 CFR 1.27

## 2. LOSS OF ENTITLEMENT TO SMALL ENTITY STATUS

☐ Patentee is no longer entitled to small entity status. See 37 CFR 1.27(g)

## 3. MAINTENANCE FEE (37 CFR 1.20(e)-(g))

The appropriate maintenance fee must be submitted with this petition, unless it was paid earlier.

NOT Small Entity			Small Entity		
Amount	Fee	(Code)	Amount	Fee	(Code)
<input type="checkbox"/> \$ _____	3 ½ yr fee	(1551)	<input type="checkbox"/> \$ _____	3 ½ yr fee	(2551)
<input type="checkbox"/> \$ _____	7 ½ yr fee	(1552)	<input checked="" type="checkbox"/> \$ 1240.00	7 ½ yr fee	(2552)
<input type="checkbox"/> \$ _____	11 ½ yr fee	(1553)	<input type="checkbox"/> \$ _____	11 ½ yr fee	(2553)

MAINTENANCE FEE BEING SUBMITTED \$ \_\_\_\_\_

## 4. SURCHARGE

The surcharge required by 37 CFR 1.20(i)(1) of \$ 700.00 (Fee Code 1557) must be paid as a condition of accepting unavoidably delayed payment of the maintenance fee.

SURCHARGE FEE BEING SUBMITTED \$ 700.00

## 5. MANNER OF PAYMENT

- ☐ Enclosed is a check for the sum of \$ \_\_\_\_\_
- ☐ Please charge Deposit Account No. \_\_\_\_\_ the sum of \$ \_\_\_\_\_
- ☒ Payment by credit card. Form PTO-2038 is attached.

## 6. AUTHORIZATION TO CHARGE ANY FEE DEFICIENCY

- ☒ The Director is hereby authorized to charge any maintenance fee, surcharge or petition fee deficiency to Deposit Account No. 502978

PTO/SB/65 (03-09)

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U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE

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## 7. OVERPAYMENT

As to any overpayment made, please

☒ Credit to Deposit Account No. 502978

OR

☐ Send refund check

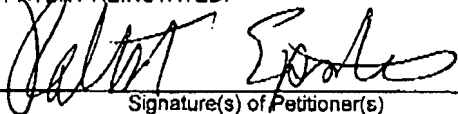
## WARNING:

Petitioner/applicant is cautioned to avoid submitting personal information in documents filed in a patent application that may contribute to identity theft. Personal information such as social security numbers, bank account numbers, or credit card numbers (other than a check or credit card authorization form PTO-2038 submitted for payment purposes) is never required by the USPTO to support a petition or an application. If this type of personal information is included in documents submitted to the USPTO, petitioners/applicants should consider redacting such personal information from the documents before submitting them to the USPTO. Petitioner/applicant is advised that the record of a patent application is available to the public after publication of the application (unless a non-publication request in compliance with 37 CFR 1.213(a) is made in the application) or issuance of a patent. Furthermore, the record from an abandoned application may also be available to the public if the application is referenced in a published application or an issued patent (see 37 CFR 1.14). Checks and credit card authorization forms PTO-2038 submitted for payment purposes are not retained in the application file and therefore are not publicly available.

## 8. SHOWING

The enclosed statement will show that the delay in timely payment of the maintenance fee was unavoidable since reasonable care was taken to ensure that the maintenance fee would be paid timely and that this petition is being filed promptly after the patentee was notified of, or otherwise became aware of, the expiration of the patent. The statement must enumerate the steps taken to ensure timely payment of the maintenance fee, the date and the manner in which the patentee became aware of the expiration of the patent, and the steps taken to file the petition promptly.

## 9. PETITIONER(S) REQUESTS THAT THE DELAYED PAYMENT OF THE MAINTENANCE FEE BE ACCEPTED AND THE PATENT REINSTATED.



Signature(s) of Petitioner(s)

Apr. 29, 2011

Date

Robert L. Epstein

Typed or printed name(s)

26451

Registration Number, if applicable

60 East 42nd Street, Suite 2410

Address

212-292-5390

Telephone Number

New York, NY 10165

Address

## ENCLOSURES:

- ☒ Maintenance Fee Payment  
☒ Statement why maintenance fee was not paid timely  
☒ Surcharge under 37 CFR 1.20(i)(1) (fee for filing the maintenance fee petition)  
☐ Other:

PTO/SB/55 (03-09)  
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37 CFR 1.378(d) states: "Any petition under this section must be signed by an attorney or agent registered to practice before the Patent and Trademark Office, or by the patentee, the assignee, or other party in interest."



Apr. 29, 2011

Date

Robert L. Epstein

26451

Type or printed name

Registration Number, if applicable

### STATEMENT

(In the space below, please provide the showing of unavoidable delay recited in paragraph 8 above.)

The firm of James & Franklin applied for and obtained the instant patent. After issuance and payment of the first maintenance fee on January 9, 2003, James & Franklin merged in 2004 with the firm of Bazerman & Drangel P.C. to form the firm of Epstein Drangel Bazerman & James LLP (recently renamed Epstein Drangel LLP), and concurrently moved into new offices. As part of the merger, all of the patent files of James & Franklin, which had formerly been docketed in a handwritten docketing system, were transferred into the system used by Bazerman & Drangel. This process involved a team of clerks sorting through hundreds of distinct files and 1) providing a new docket number for each file, 2) entering the identifying data and controlling dates (for example priority date, filing date, and/or issuance date) into a new electronic docketing system, and 3) associating the matter with the customer number, reflecting the new address, for the new firm. The electronic docketing system calculates maintenance fee due dates and generates reminders to attorneys and staff based on issuance dates, among other things.

Despite the institution of several checks in this process, and for an unknown reason which is still being investigated, the information related to the instant patent is not in the new electronic docketing system and the physical file cannot be located. Accordingly, the electronic docketing system did not generate, and no one at the firm received, a reminder that the second maintenance fee for this patent was due. Further, this matter was not associated with the customer number for the new firm. Since the correspondence address for this file was not updated with the USPTO to reflect the new address of the new firm, the USPTO would have sent the Maintenance Fee Reminder to the old address for James & Franklin. As a result, the new firm did not receive the Maintenance Fee Reminder from the USPTO. Therefore, the second maintenance fee, which was due at the latest on July 20, 2007, was not paid, which was an unavoidable result under these circumstances. Epstein Drangel LLP identified that the instant patent became abandoned two days ago as a result of a review of Public PAIR while preparing a new patent application for the client. The undersigned immediately prepared and filed this petition, and is concurrently conducting a review of all records entered during the merger.

(Please attach additional sheets if additional space is needed)

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